

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Jan 20, 2022**

SEAN F. McAVOY, CLERK

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

COUNTRY MUTUAL INSURANCE  
COMPANY, an Illinois corporation,

Plaintiff,

v.

J. TIM JACKSON and ROBERTA  
JACKSON, husband and wife; IBEX  
CONSTRUCTION, INC., a Washington  
corporation; STEVEN O. ANDERSON, as  
personal representative of the ESTATE OF  
EDWARD K. DUMAW, on behalf of the  
Estate and surviving family members,  
CARRIE DUMAW, KRISTEN DUMAW,  
MEGAN DUMAW, and ANNA  
DUMAW, individually; THEODORE  
LISTER; DALE RANDALL HILL; JACK  
STEGALL, JR; INLAND NORTHWEST  
EQUIPMENT AUCTION, INC., d/b/a  
REINLAND AUCTIONEERS, a  
Washington corporation; REINLAND,  
INC., d/b/a REINLAND EQUIPMENT  
AUCTION, an Idaho corporation;  
REINLAND PROPERTIES, LLC, an  
Idaho limited liability company; THOMAS  
REINLAND and KUNYA REINLAND,  
husband and wife; ASHLY REINLAND  
and JOHN DOE REINLAND, husband and  
wife; PACIFIC HIDE & FUR DEPOT,  
d/b/a PACIFIC STEEL & RECYCLING, a  
Montana corporation; PACIFIC HIDE &  
FUR DEPOT, INC., d/b/a PACIFIC

No. 2:20-CV-00150-SAB

**ORDER GRANTING  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT;  
DENYING DEFENDANTS'  
MOTION FOR SUMMARY  
JUDGMENT**

**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY  
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1 STEEL & RECYCLING, a Washington  
2 corporation;

3 Defendants.

4 Before the Court are Defendants' Motion for Summary Judgment, ECF  
5 No. 49;<sup>1</sup> Plaintiff's Motion for Summary Judgment, ECF No. 52; and Defendant  
6 Pacific Hide & Fur Depot's Stipulated Motion to Dismiss with Prejudice, ECF No.  
7 69.<sup>2</sup> The Motions were considered without oral argument. Plaintiff Country Mutual  
8 Insurance Company ("Country Mutual") is represented by Sarah Eversole.  
9 Defendants Steven O. Anderson, Carrie Dumaw, Kristen Dumaw, Megan Dumaw,  
10 and Anna Dumaw are represented by Sara Maleki, Janelle M. Carney, and Jennifer  
11 Leigh Bechtold. Defendants Inland Northwest Equipment Auction, Inc., Reinland,  
12 Inc., Reinland Properties, Inc., Thomas Reinland, Kunya Reinland, Ashly Reinland,  
13 and John Doe Reinland (the "Reinlands") are represented by James Bernard King  
14 and Christopher Joseph Kerley. Defendant Washington State Assistant Attorney  
15 General Michael K. Hall is representing himself.

16 This case is about personal and environmental injury and who will pay the  
17 damages. On August 12, 2015, a metal cylinder was loaded into a shear for recycling  
18

19 <sup>1</sup> The Motion is brought by Defendants/Counterclaimants Inland Northwest  
20 Equipment Auction Inc. d/b/a Reinland Auctioneers, Reinland, Inc., d/b/a/ Reinland  
21 Equipment Auction, Reinland Properties, LLC, Thomas Reinland and Kunya  
22 Reinland, and Ashley Reinland.

23 <sup>2</sup> On January 13, 2022, Plaintiff Country Mutual and Defendant Pacific Hide &  
24 Fur Depot d/b/a Pacific Steel & Recycling filed a Stipulated Motion to Dismiss with  
25 Prejudice. ECF No. 69. Good cause existing, the Court grants the motion. Country  
26 Mutual's claim against Pacific Hide & Fur Depot d/b/a Pacific Steel & Recycling  
27 are hereby dismissed with prejudice and without further award of attorneys' fees or  
28 costs to either party.

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1 at Pacific Steel & Recycling in Spokane, Washington. The cylinder turned out to be  
 2 a pressurized vessel containing poisonous chlorine gas—which exploded and  
 3 resulted in the death of one individual, serious injuries to others, and environmental  
 4 contamination. After the accident, several lawsuits were filed in state and federal  
 5 court. The Reinlands, insured by two Country Mutual policies, tendered the lawsuits  
 6 to its insurer for defense. Country Mutual accepted defense under a reservation of  
 7 rights and now brings this action for declaratory judgment against its insureds  
 8 claiming that it has no further duty to defend.

9 The Court grants Country Mutual’s Motion for Summary Judgment and  
 10 denies the Reinlands’ Motion for Summary Judgment. The Court finds that there is  
 11 no conflict between Washington and Idaho law, and therefore, Washington law  
 12 governs interpretation of the insurance policies. In this case, the policies’ pollution  
 13 exclusions preclude coverage of the damages and injuries asserted in the underlying  
 14 lawsuits. Because the initial peril is uncovered, the Court does not engage in efficient  
 15 cause analysis. Finally, the Court concludes that Country Mutual issued a legally  
 16 sufficient reservation of rights. Declaratory judgment is issued in Country Mutual’s  
 17 favor.

### 18 **Background<sup>3</sup>**

19 **Relevant Actors.** Defendants Thomas and Kunya Reinland are a married  
 20 couple and the sole owners and officers of two auction companies: (1) Inland  
 21 Northwest Equipment Auction, Inc. d/b/a Reinland Auctioneers (“Inland NW”), a  
 22 Washington corporation, and (2) Reinland Inc. d/b/a Reinland Equipment Auction  
 23 (“Reinland, Inc.”), an Idaho corporation. Reinland, Inc.’s business premises are  
 24 \_\_\_\_\_

25 <sup>3</sup> The parties do not dispute any facts for purposes of summary judgment.  
 26 These facts can be found in the parties’ respective statements of material facts,  
 27 submitted pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local  
 28 Rule 56.1(c)(1). ECF Nos. 52, 56, 61.

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1 located in Post Falls, Idaho. The Reinlands also own a real estate holding company,  
2 Reinland Properties, LLC; the Post Falls property is held in its name.

3 **The Agreement.** In March or April 2015, Defendant Tim Jackson, owner of  
4 Ibex Construction, Inc., requested that Mr. Reinland hold an on-site auction at Mr.  
5 Jackson's property located on North Regal in Spokane, Washington (the "North  
6 Regal property"). A tire company also occupied the site and stored property thereon.  
7 Mr. Reinland visited the North Regal property and reviewed the inventory to be sold  
8 at the auction. After a view of the property and inventory, Mr. Reinland and Mr.  
9 Jackson agreed to a date for an on-site auction.

10 A couple weeks later, Mr. Reinland visited Mr. Jackson again on the North  
11 Regal property. Mr. Reinland told Mr. Jackson that the gentleman who owned the  
12 tire company was encroaching on the area where Mr. Reinland needed to line up  
13 equipment for the auction. Mr. Jackson agreed that it would be too difficult to line  
14 the auction items up on the property. Instead, Mr. Reinland suggested to Mr. Jackson  
15 that he move the equipment and other auction items to the Reinland, Inc. auction site  
16 in Post Falls, Idaho.

17 Around June 2015, Mr. Reinland met with Mr. Jackson again at the North  
18 Regal property. They discussed the cost of moving the auction items to the Reinland,  
19 Inc.'s business premises in Post Falls. Mr. Jackson stated that the cost was too high.  
20 At that point, Mr. Reinland offered to buy the auction items for \$32,500, and Mr.  
21 Jackson agreed on the spot.

22 The agreement was that Mr. Reinland would pay Mr. Jackson \$32,500, and in  
23 exchange, Mr. Reinland would take the auctionable items—primarily vehicles,  
24 equipment, and shop items—from the front area of the North Regal property. ECF  
25 No. 56 at 10, ¶ 42. Items taken from the property would become Mr. Reinland's  
26 property and sold at auction through Reinland, Inc. After reaching this agreement,  
27 Mr. Reinland visited the North Regal property to haul away the sellable items. The  
28

1 hauling of auctionable items occurred over the course of five to seven non-  
2 consecutive days.

3        Gordon Beck was a customer of the Reinland family auction business. He is  
4 a lifelong scrap metal recycler and does business with Pacific Steel & Recycling  
5 (“Pacific Steel”). While still picking through items to select for the auction, Mr.  
6 Reinland discussed the possibility of Mr. Beck becoming involved in the transaction.  
7 Mr. Beck indicated that he was interested in “doing the scrap metal” at the North  
8 Regal property. Mr. Beck and Mr. Reinland then met at the North Regal property.  
9 *Id.* at 15, ¶ 70. Mr. Reinland instructed Mr. Beck to “take whatever he would be okay  
10 taking for scrap.” *Id.* at 16, ¶ 74. The compensation scheme was that Mr. Reinland  
11 and Mr. Beck would split the “scrap money,” which would ultimately be paid by  
12 whomever Mr. Beck hauled the scrap to. Mr. Beck arranged with Pacific Steel to  
13 haul the scrap metal off the site.

14        About halfway through the yard and toward the north fence of the North Regal  
15 property, there was a pressurized metal vessel containing chlorine gas. It was a  
16 1,500-gallon tank, rotted out at the bottom and estimated to be three feet across and  
17 six feet long. Mr. Beck estimates that the cylinder was about 1,000 to 1,500 pounds.  
18 He believed the vessel was part of a roller. Unfortunately, he was wrong.

19        Donald Bond was a driver for Pacific Steel. On August 12, 2015, Mr. Bond  
20 went to the north side of Spokane to do a pick-up for recycling materials in an “end  
21 dump”—a semi-trailer that hydraulically lifts to dump loads, similar to a dump truck.  
22 Mr. Bond knew he would be picking up “a mixture of” miscellaneous scrap iron. *Id.*  
23 at 36, ¶ 198. Mr. Bond and Mr. Beck loaded materials onto his truck that day. The  
24 material was loaded into the end dump with an excavator operated by Mr. Beck.  
25 When Mr. Beck was loading the truck, Mr. Bond stood off to the front and out of the  
26 way. He did not watch every single piece of scrap material that was loaded, but he  
27 saw Mr. Beck load the pressurized tank. Neither Mr. Bond nor Mr. Beck looked at  
28 or inspected the tank before it was loaded.

1 When Mr. Bond arrived at Pacific Steel later that day, he pulled onto the scale  
 2 and informed the scale individual that he had a load of mixed materials from Mr.  
 3 Beck. He then went around to the scrap yard to dump the load. Mr. Bond dumped  
 4 the materials so they could be loaded into the “Metso,” a large shear. Edward  
 5 Dumaw was the one loading the shear with materials for processing, and Ted Liston  
 6 was operating the shear. Afterward, Mr. Bond learned that there was an accident  
 7 when the pressurized tank with chlorine gas was loaded into the shear. The accident  
 8 contaminated the surrounding environment and caused significant bodily injuries to  
 9 several people, as well as the unfortunate death of Mr. Dumaw.

10 **The Policies and Tender to Insurance.** Country Mutual Insurance Company  
 11 issued policy number AM 9005148 06, a package of comprehensive general liability,  
 12 auto and first party property coverages, to Inland Northwest Equipment Auction,  
 13 Inc., which was effective from December 23, 2014 to December 23, 2015 (the  
 14 “Inland NW policy”). *See* ECF No. 1-1. Under Section II – Liability, the Inland NW  
 15 policy states: “We will pay those sums that the insured becomes legally obligated to  
 16 pay as damages because of ‘bodily injury’, ‘property damage’ or ‘personal and  
 17 advertising injury’ to which this insurance applies.” *Id.* at 79. Plaintiff also issued  
 18 businessowners’ policy number AM 9167456 to Reinland, Inc., which was effective  
 19 December 23, 2014 to December 23, 2015 (the “Reinland policy,” or collectively,  
 20 the “policies”). *See* ECF No. 1-2. The liability portion of the Reinland policy is  
 21 substantially identical to the Inland NW policy. ECF No. 1-2 at 70.

22 Relevant to the parties’ present dispute, the policies contain what is known as  
 23 an “absolute pollution exclusion” provision, which provides that liability coverage  
 24 does not apply to

25 (1) “Bodily injury” or “property damage” arising out of the actual, alleged or  
 26 threatened discharge, dispersal, seepage, migration, release or escape of  
 “pollutants”:

27 ...

(b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

(c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:

(i) Any insured; or

(ii) Any person or organization for whom you may be legally responsible;

(d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing or have completed operations, if the pollutants are brought on or to the premises, site or location in connection with such operation by such insured, contractor or subcontractor. However, this subparagraph does not apply to:

...

(ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from material brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor . . . .

ECF No. 1-1 at 82; ECF No. 1-2 at 73. The exclusion is also modified by a Washington Pollution Amendatory Endorsement, AIL 10 35 06 06. The relevant portion of that endorsement provides the operative definition of the term "pollutants" and "waste":

"Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant. Including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed. Lead is a pollutant when it poses an actual or alleged environmental or physical hazard to life, such as when it causes actual or alleged bodily injury arising out of its ingestion, inhalation or absorption. This description of lead as a pollutant is not to be construed in any way as limiting the scope or breadth of this definition.

ECF No. 1-1 at 11; ECF No. 1-2 at 85.

On June 29, 2017, Felix W. Shuck filed an action under case number 17-2-02508-3 in Spokane County Superior Court, and on August 17, 2017, David M. Levin and Teresa Jan Levin filed an action in this district court under case number



2:17-CV-00288-SAB, seeking damages for personal injuries arising out of the August 12, 2015 incident. On April 3, 2018, Defendant Steven O. Anderson, as personal representative of the Estate of Edward K. Dumaw, and on behalf of the Estate and surviving family members Carrie Dumaw, Kristen Dumaw, Megan Dumaw, and Anna Dumaw, filed a complaint in the Spokane County Superior Court under case number 18-2-01432-2 seeking damages for wrongful death and personal injuries arising out of the incident. On July 27, 2018, Theodore Lister, Dale Randall Hill, and Jack Stegall, Jr. filed a complaint in Spokane County Superior Court under case number 18-2-03283-5, also seeking damages for personal injuries. All the cases (the “Underlying Lawsuits”) arose out of the same August 17, 2017 incident.

On August 9, 2018, Inland NW, and Reinland, Inc., tendered the lawsuits to Country Mutual for defense. On October 15, 2018, Country Mutual accepted defense of the lawsuit and issued a reservation of rights letter under the Inland NW policy. On April 15, 2019, Country Mutual accepted defense and issued a second reservation of rights letter under the Reinland, Inc. policy.

## **Legal Standard**

### **A. Summary Judgment**

Summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). There is no genuine issue for trial unless there is sufficient evidence favoring the non-moving party for a jury to return a verdict in that party’s favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). The moving party has the initial burden of showing the absence of a genuine issue of fact for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). If the moving party meets its initial burden, the non-moving party must go beyond the pleadings and “set forth specific facts showing that there is a genuine issue for trial.” *Anderson*, 477 U.S. at 248.



1 In addition to showing there are no questions of material fact, the moving  
 2 party must also show it is entitled to judgment as a matter of law. *Smith v. Univ. of*  
 3 *Wash. Law Sch.*, 233 F.3d 1188, 1193 (9th Cir. 2000). The moving party is entitled  
 4 to judgment as a matter of law when the non-moving party fails to make a sufficient  
 5 showing on an essential element of a claim on which the non-moving party has the  
 6 burden of proof. *Celotex*, 477 U.S. at 323. The non-moving party cannot rely on  
 7 conclusory allegations alone to create an issue of material fact. *Hansen v. United*  
 8 *States*, 7 F.3d 137, 138 (9th Cir. 1993).

9 When considering a motion for summary judgment, a court may neither weigh  
 10 the evidence nor assess credibility; instead, “the evidence of the non-movant is to be  
 11 believed, and all justifiable inferences are to be drawn in his favor.” *Anderson*, 477  
 12 U.S. at 255. Where, as here, parties submit cross-motions for summary judgment,  
 13 “[e]ach motion must be considered on its own merits.” *Fair Hous. Council of*  
 14 *Riverside Cty., Inc. v. Riverside Two*, 249 F.3d 1132, 1136 (9th Cir. 2001).  
 15 Accordingly, it is the district court’s duty to “review each cross-motion  
 16 separately . . . and review the evidence submitted in support of each cross-motion.”  
 17 *Id.*

## 18 Discussion

19 The primary disputes in this action are whether Country Mutual reserved its  
 20 rights to deny coverage for the claims in dispute and whether Country Mutual has a  
 21 duty to defend its insureds. To address both inquiries, the Court must first determine  
 22 what law governs interpretation of the insurance policies. Each issue is discussed in  
 23 turn.

### 24 1. Washington law governs interpretation of the insurance policies.

25 As this action is brought pursuant to diversity jurisdiction and Washington is  
 26 the forum state, Washington law governs the Court’s choice-of-law analysis.  
 27 *Abogados v. AT&T, Inc.*, 223 F.3d 932, 934 (9th Cir. 2000); *Patton v. Cox*, 276 F.3d  
 28 493, 495 (9th Cir. 2002); ECF No. 1 at 4 ¶ 2.1. Whether a court in Washington

1 should apply a foreign state’s law is a two-party inquiry. First, the court must find  
2 that an “actual conflict” exists between Washington law and the law of a foreign  
3 state. *Erwin v. Cotter Health Ctrs.*, 161 Wash. 2d 676, 167 P.3d 1112, 1120 (Wash.  
4 2007). An “actual conflict” exists if the outcome of an issue is different depending  
5 on which state’s law applies. *Id.* “[W]here laws or interests of concerned states do  
6 not conflict,” the situation presents a “false conflict” and “the presumptive local law  
7 is applied.” *Id.* (quoting *Burnside v. Simpson Paper Co.*, 123 Wash. 2d 93, 864 P.2d  
8 937, 941 (Wash. 1994)); *Seizer v. Sessions*, 132 Wash. 2d 642, 940 P.2d 261, 264  
9 (Wash. 1997). In contrast, if there is a real conflict of law, the governing law will be  
10 that of the state with the most significant relationship to the issue in question.  
11 *Williams v. State*, 76 Wash.App. 237, 885 P.2d 845, 848 (Wash. Ct. App. 1994)  
12 (quoting *Burnside*, 864 P.2d at 940–41).

13 The insurance policies do not include choice-of-law provisions. The  
14 Reinlands contend—and Country Mutual appears to agree—that the Inland NW  
15 policy is governed by the law of Washington, and the Reinland policy is governed  
16 by the law of Idaho. ECF No. 49 at 12–13. Defendant Steven O. Anderson argues  
17 that Washington provides the controlling law because neither Country Mutual nor  
18 the Reinlands have shown an “actual conflict” between Washington and Idaho law.  
19 ECF No. 59 at 6–7.

20 The Court finds that there is no fundamental difference between Washington  
21 and Idaho law that would apply to the insurance policies. To the extent there is a  
22 conflict with respect to the states’ adoption of the doctrine of efficient proximate  
23 cause, the Court need not perform an efficient cause analysis in this case for the  
24 reasons discussed below.<sup>4</sup> Accordingly, the Court applies Washington law.

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25  
26 <sup>4</sup> Washington State, along with most jurisdictions, has expressly adopted the  
27 rule of “efficient proximate cause” to determine whether claimed injuries or  
28 damages are caused by a covered or excluded peril under an insurance policy. *Xia v.*

1       2.     Country Mutual did not waive its right to assert defenses to coverage.

2       Next, the Reinlands contend that Country Mutual waived coverage  
3 defenses—and thus should be estopped from denying coverage—because it issued  
4 legally deficient reservation of rights letters. They assert that a reservation of rights  
5 letter sent on October 15, 2018 pertaining to the Reinland policy was inadequate  
6 because it was not specifically addressed to Thomas Reinland, Kunya Reinland,  
7 Ashly Reinland, and Reinland Properties, LLC. *See generally* ECF No. 55-1. In  
8 addition, the Reinlands aver that the letter sent on April 15, 2019 regarding the  
9 Inland NW policy was “defective” because it did not reference provisions of the  
10 relevant policy. *See generally* ECF No. 55-2. Specifically, the Reinlands note that  
11 the wrong policy number is cited on one page of the letter. As with the October 15,  
12 2018 letter, they also argue that the April 15, 2019 letter did not provide sufficient  
13 notice to them because it did not address their individual status as insureds.

14       Conversely, Country Mutual argues that its reservation of rights was adequate  
15 because the October 15, 2018 letter was properly addressed to the named insured,  
16 Inland Northwest Equipment Auction, Inc., in the “care of” Thomas Reinland and  
17 that all relevant parties were notified of its contents. Country Mutual also contends  
18 that—besides one typographical error in the April 15, 2019 letter—the reservation  
19 of rights letters laid out the exact policy exclusions presented as a defense in this  
20 lawsuit.

21  
22  
23 *ProBuilders Specialty Ins. Co. RRG*, 188 Wash. 2d 171, 400 P.3d 1234, 1240 (Wash.  
24 2017). The Idaho Supreme Court has not expressly adopted the rule but has cited the  
25 doctrine favorably. *ABK, LLC v. Mid-Century Ins. Co.*, 166 Idaho 92, 454 P.3d 1175  
26 (Idaho 2019) (citation omitted) (“The EPC doctrine is generally recognized as the  
27 universal method for resolving coverage issues involving the concurrence of covered  
28 and excluded perils.”).

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1 The Court finds that Country Mutual did not waive its right to assert defenses  
2 to coverage on the underlying claims. First, it is evident that the October 15, 2018  
3 letter was properly addressed to its insured, Inland Northwest Equipment Auction,  
4 Inc. Country Mutual expressly agreed to provide a defense subject to a reservation  
5 of rights to it “along with related individuals and entities named as defendants” in  
6 the relevant lawsuits, which includes the Reinland Defendants. ECF No. 55-1 at 2.  
7 The Reinlands’ argument would have more merit if Thomas Reinland, Kunya  
8 Reinland, Ashly Reinland, and Reinland Properties, LLC individually tendered  
9 claims; however, they tendered one claim to Country Mutual through their shared  
10 attorney. And crucially, there is no dispute that the Reinlands received actual notice  
11 of Country Mutual’s agreement to provide a defense subject to a reservation of  
12 rights.

13 Second, the Court concludes that the reservation of rights letters were  
14 sufficiently detailed because they informed the parties of the specific policy defenses  
15 Country Mutual sought to assert. *See Weber v. Biddle*, 4 Wash. App. 519, 483 P.3d  
16 155, 159 (Wash. Ct. App. 1971) (finding that waiver may occur where a reservation  
17 of rights is “general in nature” and does not “state the specific policy defenses upon  
18 which the insurer intends to rely”). Despite one typographic error that listed the  
19 wrong policy number, the April 15, 2019 letter cites the language of the correct  
20 policy and states that Country Mutual will provide the insureds and related  
21 individuals named as defendants in the lawsuits with a defense under the relevant  
22 policy number, AM 9005148 06. ECF No. 55-2 at 2, 4. The letter then enumerates  
23 the precise exclusions Country Mutual now asserts preclude coverage of the claims,  
24 to wit: the pollution exclusion and late notice of the claims. *Id.* at 4–5. The same is  
25 true for the October 15, 2018 letter. ECF No. 55-1 at 4–7. For these reasons, Country  
26 Mutual did not waive its defenses to coverage.

27 //

28 //

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1                   3.     The precipitating act was an uncovered peril.

2             Finally, the Court considers whether Country Mutual is entitled to declaratory  
3 relief. The insurance policies provide that coverage does not apply to, among other  
4 things, bodily injury or property damage arising out of the “actual, alleged or  
5 threatened discharge, dispersal, seepage, migration, release or escape of pollutants,”  
6 (1) “[a]t or from any premises, site, or location which is or was at any time used by  
7 or for any insured or others for the handling, storage, disposal, processing or  
8 treatment of waste,” and/or (2) “[w]hich are or were at any time transported,  
9 handled, stored, treated, disposed of, or processed as waste by or for” any insured or  
10 an individual or organization the insured may be legally responsible. ECF No. 1-2  
11 at 73–74. “Pollutants” is defined in part as “any solid, liquid, gaseous or thermal  
12 irritant or contaminant. Including smoke, vapor, soot, fumes, acids, alkalis,  
13 chemicals and waste”; and “waste” includes “materials to be recycled, reconditioned  
14 or reclaimed.” ECF No. 1-2 at 69, ¶ 10; ECF No. 1-1 at 11; ECF No. 1-2 at 85.

15             In Washington, insurance policies are construed as contracts. *Quadrant Corp.*  
16 *v. Am. States Ins. Co.*, 154 Wash. 2d 165, 110 P.3d 733, 737 (Wash. 2005). If the  
17 language of an insurance policy is clear and unambiguous, courts must enforce it as  
18 written. *Id.* To determine whether coverage exists, courts in Washington utilize a  
19 two-step process: “The insured must show the loss falls within the scope of the  
20 policy’s insured losses. To avoid coverage, the insurer must then show the loss is  
21 excluded by specific policy language.” *McDonald v. State Farm Fire & Cas. Co.*,  
22 119 Wash. 2d 724, 837 P.2d 1000, 1003–04 (Wash. 1992). Generally, policy  
23 coverage exclusions in Washington run contrary to the fundamental purpose of  
24 insurance, and courts will not extend them beyond their clear and unequivocal  
25 language. *City of Bremerton v. Harbor Ins. Co.*, 92 Wash. App. 17, 963 P.2d 194,  
26 196 (Wash. Ct. App. 1998). Absolute pollution exclusions purport to exclude  
27 coverage from all losses related to pollution; they are enforceable and apply to losses  
28 arising from (1) a pollutant (2) acting as a pollutant. *Quadrant*, 110 P.3d at 741.

1 Washington utilizes the rule of “efficient proximate cause” to provide  
2 coverage “where a covered peril sets in motion a casual chain[,] the last link of which  
3 is an uncovered peril.” *Key Tronic Corp. Inc. v. Aetna (CIGNA) Fire Underwriters*  
4 *Ins. Co.*, 124 Wash. 2d 618, 881 P.2d 201, 206 (Wash. 1994). “If the initial event,  
5 the ‘EPC,’ is a covered peril, then there is coverage under the policy regardless [of]  
6 whether subsequent events within the chain, which may be causes-in-fact of the loss,  
7 are excluded by the policy.” *Xia*, 400 P.3d at 1240 (citing *Key Tronic Corp.*, 881  
8 P.2d at 206). However, “the efficient proximate cause rule operates *only* when the  
9 precipitating event is a covered peril. There is no coverage when the precipitating  
10 event is itself excluded from coverage under the policy.” *Pluta v. United Servs. Auto.*  
11 *Ass’n*, 72 Wash. App. 902, 866 P.2d 690, 693 (Wash. Ct. App. 1994) (emphasis  
12 added).

13 The parties agree that the absolute pollution exclusion provision applies and  
14 the injuries in the Underlying Lawsuits were from a “pollutant”—chlorine gas—  
15 acting as a pollutant. However, the insureds contend that coverage nonetheless exists  
16 because the efficient cause of the plaintiff’s injuries was “[Mr.] Reinland’s alleged  
17 negligence in inspecting, or failing to inspect, the scrap metal at the Jackson/Ibex  
18 property.” ECF No. 58 at 5–6. In contrast, Country Mutual avers that the initial act  
19 setting into motion the cause of events was the Reinlands’ agreement to recycle the  
20 chlorine-containing scrap metal, which fits into the pollution exclusion. ECF No. 65  
21 at 4.

22 In this case, the Court need not consider the efficient cause of the injuries  
23 because the initial peril—negligent identification of a metal cylinder for recycling  
24 or disposal—fits within the “pollution exclusion” and is an uncovered peril. The rule  
25 of efficient proximate cause is only operative when the precipitating event is a  
26 covered peril. *Xia*, 400 P.3d at 1240; *Key Tronic Corp.*, 881 P.2d at 206; *Pluta*, 866  
27 P.2d at 693. In this case, the alleged injuries arose from an agreement to transport  
28 and process a “pollutant” as waste—that is, chlorine gas within a metal container



1 intended for recycling. ECF Nos. 1-1 at 11; 1-2 at 85. Because a pollutant was  
2 “released” at Pacific Steel, a location which “was at any time used by or for any  
3 insured or others for the handling, storage, disposal, processing or treatment of  
4 waste,” and separately, because the pollutant-containing waste was “transported,  
5 handled, stored, treated, disposed of, or processed as waste” for an insured, the  
6 precipitating act was not a covered peril. ECF Nos. 1-1 at 82; 1-2 at 73. The insureds  
7 have failed to demonstrate that the loss falls within the scope of the policy’s insured  
8 losses, as general “negligence” in this context is not an independent peril distinct  
9 from the pollution exclusions. *See McDonald*, 837 P.2d at 1003–04. The Reinlands’  
10 agreement to have the metal cylinder transported to a remote facility for recycling,  
11 which resulted in the release of chlorine gas, is unambiguously excluded by the plain  
12 language of the policies.

13 Further, Country Mutual has affirmatively demonstrated that the loss is  
14 excluded by the pollution exclusion. *McDonald*, 837 P.2d at 1003–04. This is not a  
15 case where the initial peril was unrelated to the handling or disposal of pollutants  
16 and waste. Notably, none of the Defendants-insureds claim that the damages and  
17 injuries are in anyway distinct from, or caused by any event distinct from, the release  
18 of a pollutant that was “handled, transported, dispose of or processed as waste” by  
19 the Reinlands. The Defendants-insureds also do not dispute that the injuries resulted  
20 from the release of pollutants “at a location” used by the insureds “or others for the  
21 handling, storage, disposal, processing or treatment of waste.” ECF Nos. 1-1 at 82;  
22 1-2 at 9.

23 If there was any doubt, this district court’s decision in *Dolsen Companies v.*  
24 *Bedivere Ins. Co.*, 264 F. Supp. 3d 1083 (E.D. Wash. 2017) is instructive. The  
25 plaintiffs in *Dolsen Companies* operated an animal farm that processed millions of  
26 gallons of liquid manure stored in holding ponds. The holding ponds leaked and  
27 resulted in seepage of over 1.6 million gallons of untreated manure into groundwater.  
28 This Court found that the policy’s absolute pollution exclusion applied because the



1 initial act—the storing of manure—involved pollutants in the first place. The district  
2 court drew a distinction between cases like *Quadrant*, where the insured’s initial act  
3 involved the use, generation, transport or disposal of a pollutant—and cases like *Xia*,  
4 where the dispersal of a pollutant was the incidental result of the insured’s initial  
5 negligent acts:

6  
7       The distinguishing feature between these two lines of cases is the relation  
8 between the initial act and the pollutant causing harm—viz., whether the  
9 initial peril was the polluting act (i.e., whether the incident involved  
10 pollutants in the first place) or whether the initial peril was some other act  
11 that incidentally led to a polluting harm. Although subtle, this framework is  
workable and leads to a clear result in this case: the initial act was intimately  
tied to the pollutant and thus the initial peril was the polluting act.

12 264 F.Supp.3d at 1093. In this matter, the only distinguishing factor from *Dolsen* is  
13 that the Reinlands did not know the metal cylinder contained a hazardous chemical  
14 when they decided to recycle it. But, in either case, the initial event was an agreement  
15 to recycle (or dispose of) the pressurized cylinder containing chlorine gas. It did not  
16 incidentally lead to the polluting harm, but rather involved pollutants and their  
17 disposal at the outset. Coverage does not apply to the initial act, notwithstanding  
18 whether the Reinlands knew of the cylinder’s contents.

19       Due to the foregoing, the Court holds that Country Mutual Insurance Policy  
20 numbers AM 9005148 06 and AM 9167456 01 do not provide liability or property  
21 damage coverage for any personal injury claims for damages arising out of the  
22 August 12, 2015 incident, and Country Mutual does not have a further duty to defend  
23 Defendants-insureds under the terms and provisions of the policies. In addition,  
24 because the Court finds that the policies do not cover the underlying claims, the  
25 Court declines to consider Country Mutual’s additional defense of late notice.

26 //

27 //

## Conclusion

Washington law governs interpretation of the Country Mutual insurance policies. The Court finds that Country Mutual issued legally sufficient reservation of rights letters and is not estopped from asserting defenses to coverage. Further, the Court holds that the policies do not provide coverage for the damages and injuries asserted in the Underlying Lawsuits, as the peril unambiguously fits into the policies' pollution exclusion clauses. For these reasons, Country Mutual is granted summary judgment and declaratory relief.

Accordingly, **IT IS HEREBY ORDERED:**

1. Defendants' Motion for Summary Judgment, ECF No. 49, is **DENIED**.

2. Plaintiff's Motion for Summary Judgment, ECF No. 52, is **GRANTED**.

3. The parties' Stipulated Motion to Dismiss with Prejudice, ECF No. 69, is **GRANTED**.

3. The District Court Executive is directed to enter judgment in favor of Plaintiff consistent with this Order.

4. The District Court Executive is directed to **CLOSE** this file.

**IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter this Order and provide copies to counsel.

**DATED** this 20th day of January 2022.



A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

Stanley A. Bastian  
Chief United States District Judge